

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
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SEP 22 2021

CLERK, U.S. DISTRICT COURT
By _____ Deputy

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District	Northern District of Texas
Name (under which you were convicted): <i>José Lira Rodriguez</i>	Docket or Case No.:	
Place of Confinement: Federal Correctional Institution 2680 Highway 301 South Toccoa, Georgia 31549	Prisoner No.:	<i>36803-177</i>
UNITED STATES OF AMERICA	Movant (include name under which you were convicted)	v. <i>José Lira Rodriguez</i>

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

*United States District Court
Northern District of Texas
501 West Tenth ST, Room 310
Ft. Worth, Texas 76102*

(b) Criminal docket or case number (if you know): *4:15-CR-199-A (01)*

2. (a) Date of the judgment of conviction (if you know): *01-08-2016*

(b) Date of sentencing: *01-08-2016*

3. Length of sentence: *100 MONTHS*

4. Nature of crime (all counts):

8 U.S.C. 1326 (A) And (B)

(2) Illegal Reentry

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

- (a) Name of court:
- (b) Docket or case number (if you know):
- (c) Result:
- (d) Date of result (if you know):
- (e) Citation to the case (if you know):
- (f) Grounds raised:

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

N/A

(4) Nature of the proceeding:

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or

application? Yes No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or

application? Yes No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Movant has been convicted in violation of the Constitution, this Court must dismiss an Indictment charging a defendant with the offense of Illegal reentry on Equal Protection grounds. See Village of Arlington Heights v. Metropolitan Housing Development Corp, 429 U.S 252 (1977).

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Counsel had power of Attorney.

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Movants Due process Right was violated, The Supreme Court held that the definition of "Illegal Reentry" is Unconstitutionally void for Vagueness in accord to United States v. Carrillo-Lopez No. 3:20-cr-00026-MMD-WGC.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Counsel had power of Attorney and did not bring up the issue.

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All of these grounds have not been presented due to the fact that counsel had power of Attorney and did not raise the issue.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

N/A

(e) On appeal:

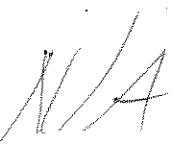
(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: 

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

To overcome procedural default the Movant has shown cause through the Equal Protection grounds, that should dismiss the Indictment. Also actual prejudice resulting from the alleged Constitutional violation. See Wainwright v. Sykes 433 U.S. 72, 84, 97 S. Ct. 2497, 2505, 53 L. Ed. 2d. 594 (1977).

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

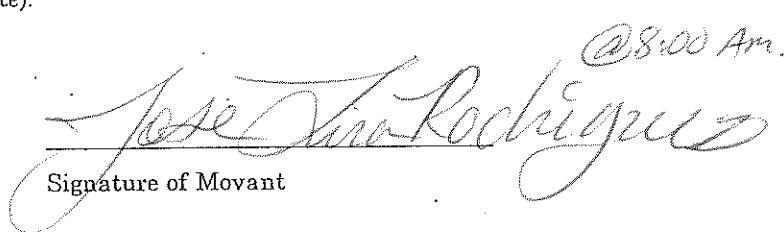
Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on September 17, 2021 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.



Jose Lira Rodriguez
Fed. Reg. No. 36803-177
Federal Correctional Institution
2680 Highway 301 South
Tenesse, Georgia 31599

United States District Court
Northern District of Texas
501 West Tenth St., Room 310
Fort Worth, Texas 76102

* Legal Mail *

* Legal Mail *

Karen Meit

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